Supreme Court, U.S.
FILED
061655 JUN 9 - 2007
OFFICE OF THE CLERK

No.:_____

In The
SUPREME COURT OF THE UNITED STATES

MAUHOI . TUNG,
Petitioner,

v.

HENRY CHIU D.D.S., d/b/a MOTT STREET DENTAL SERVICES P.C.

Respondent.

On Petition For A Writ Of Certiorari To The State Of New York Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

Mau Hoi. Tung, Petitioner
101, Danforth Avenue,
Jersey City, New Jersey 07305
(201) 433-9341

QUESTION PRESENTED

As a dentist, the respondent did malignant damaging acts in the petitioner's mouth and body for his purpose of premeditated malpractice plan resulting in the petitioner's mouth and body tissues were harmed and damaged, which is horrible matter as it not only brought the painful burden to the people, also produced the damaging effects be harmful to our community quality and cultural values. The respondent deprived the petitioner of body right and health, as the fact exists there.

LIST OF PARTIES

The parties appear in the caption of the case on the cover.

(The respondent Henry Chiu D.D.S. actually owned or controlled the office of Henry Chiu D.D.S., d/b/a Mott Street Dental Services P.C. and Mott Street Dental at 2, Mott Street, Suite 303, New York, New York 10013).

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On January 11, 2007, State of New York, Court of Appeals entered an Order denying a petitioner's reargument motion (2a) from State of New York, Court of Appeals' Order dismissing a petitioner's motion for leave to appeal to State of New York, Court of Appeals (3a) from the Appellate Division of New York State Supreme Court, First Department's Order denying a petitioner's motion for leave to appeal to this Court (4a) from the Appellate Term of New York State Supreme Court, First Department's Order and Decision denying the petitioner's reargument motion and appeal (5a, 6a-7a).

JURISDICTION

The New York State, Court of Appeals entered an Order Denying a petitioner's reargument motion from the order of New York state, Court of Appeals denying petitioner's motion for leave to appeal to New York State, Court of Appeals on January 11, 2007. The application for extending time to file petition was filed within ninety days of that day. This petition is filed within sixty days of the extended period (1a). This Court has jurisdiction to review that decision pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The respondent deprived the petitioner of body right by planned and did the premeditated malpractice(s) acts in the petitioner's mouth and body which harmed and damaged the petitioner's mouth and body tissues causing damaging consequences.

STATEMENT OF THE CASE

About April in 1997, the Petitioner had a small problem of a blood ball from the apex of gingival papilla between the teeth of #18 & #19 at facial side on left of lower jaw, measuring about 0.25 cm at the apex of gingival papilla (i.e. the bottom of the blood ball), about 0.5 cm width at the middle of the blood ball and about 0.7 cm height. This blood ball was tightened to become about 0.12 cm at the bottom of the blood ball by wrapping a thread around it as was done by the Petitioner; but there was not any pain on any the Petitioner's teeth, gums or periodontiums, and all of the Petitioner's gums were normal in nature without gingivitis or pain; also the Petitioner's whole body felt very comfortable.

On May 1, 1997, the first time, the Petitioner went to the Respondent Henry Chiu D.D.S. for a small problem of the aforementioned blood ball. After an x-ray, Respondent said that the Petitioner did not have any problems with any teeth, but the Respondent alleged the blood ball was cancer and scheduled the date of May 2, 1997 to remove it; the Petitioner did not know what it was at that time, because the Petitioner did not have any medical and dental history

and treatment experience. Actually, Respondent planned to harm the Petitioner's mouth and body tissues for his malpractice(s) purpose. The Respondent's major acts was that to harm the Petitioner's teeth for getting his implant businesses, and to harm the Petitioner's mouth and body tissues for making the smokescreen and the dishonest means by a premeditated malpractice(s) plan. On May 2, 1997, the Respondent started to do the first step of his premeditated malpractice(s) acts for making chances to continue his premeditated malpractice(s) plan.

From May 2, 1997 to June 15, 2002, the Respondent did a whole series of his premeditated malpractice(s) plan. The Respondent stealthily, serially harmed the Petitioner's teeth, gums, tissues of jaws and the tissues of mouth and body; and stealthily, serially injected large amount of liquids of the noxious reaction mixtures or virus (its has the high reaction characteristic) into the Petitioner's mouth tissues, and injected the condensed noxious reactants, substances and etc. into the tissues under the tongue, the harmed teeth, gums, the tissues of jaw, left inner cheek which then defused or directly injected into the hidden parts of mouth and body, became to be the reactive inducers or infectious agents causing the lengthy reaction motions and pain; these reaction motions were induced to severe by the Respondent injected and applied the different inducers inducing the symptoms of the severe burning pain (on May 2 &16, 1997 and June 15, 2002) and severe cold biting or corrosive pain (at most times) and etc. causing the severe reaction motions and the lengthy inflammatory reactions and pain (especially teeth, gums, tissues of jaws, the tissues under the tongue, left ear area, cheek, neck, cervical area, shoulders, left arm and spine) which harmed and damaged the Petitioner's mouth and body tissues.

From May 2, 1997 to June 15, 2002, the Respondent did a whole series of malpractice(s) acts by a premeditated malpractice(s) plan (8a Tr. 21a), which the Respondent did the main malpractice(s) acts after covering the Petitioner's eyes on these dates of May 2, 1997 (9a), May 16, 2001 (12a), June 6, 2001 (13a) and June 15, 2002 (19a).

On May 2, 1997, the Respondent started to do the first step of his malpractice(s) acts when removing a small problem of the above-mentioned blood ball (8a Tr. 9a) for making chances to continue his premeditated malpractice(s) plan. After the Respondent did the first step of his premeditated malpractice(s) procedures (8a Tr. 11a); the Respondent let the harmed teeth of #4, #10 & #14 be broken for his implant business, and let the Petitioner's mouth and body tissues be harmed and damaged as possible by the noxious medications, reaction mixtures or virus which were injected and applied into the Petitioner's mouth and body tissues causing severe burning pain, severe cold biting or corrosive pain and etc. But, at that time, the Petitioner did not know why the abnormal symptoms happened, and did not know how to do; when the Petitioner asked the Respondent about the pain, but the Respondent always told the Petitioner and said "your teeth had no problems, you should stay only one dentist, I know what you need". The #10 tooth broke off on January 2000 and the #4 tooth broke about February 17, 2001.

When puling the #10 root (did other works)? on Feb. 9, 2001 and pulling the #4 root on Feb. 22, 2001, the Respondent used the malpractice(s) means to vandalize its gums bone or tissues (11a) similarly in the way like the one of #14 tooth roots was vandalized into three pieces inside the socket or bone by the respondent's serial malpractice(s) acts on May 2, 1997, June 6, 2001 and June 15, 2002.

From May 16, 2001 to June 15, 2002, the Respondent harmed and vandalized the Petitioner's mouth and body tissues with the worse malpractice means when implanting #10 (12a Tr. 21a) for making the smokescreen to hide the dishonorable things he did and continuing his premeditated malpractice(s) plan of harming the Petitioner's teeth to enable he could get the businesses of implanting the Petitioner's teeth one by another (24 hundred dollars each implant tooth).

On May 16, 2001, after covering the Petitioner's eyes (the Respondent may not install the #10 implant socket this time), the Respondent opened eight lingual gums (for the #10 ?) for the premeditated malpractice(s) purpose, as he did damaging works and injected noxious medications and etc. into Petitioner's mouth and body stealthily under the smokescreen of the abnormal heavy drill turning sounds more than twenty times periodically, and designed to cause thing at the #10 facial gum (12a Tr. 13a), for making the reason and chances to do the Respondent's premeditated further malpractice(s) acts to harm and to vandalize the Petitioner's teeth, gums, and the tissues of jaw, mouth and body, and to apply and inject the additional noxious reactants and etc. into the deeper parts of the Petitioner's mouth and body tissues On June 6, 2001 (13a Tr. 16a).

From installing the #10 temporary implant pin on January 7, 2002 to installing the #10 permanent implant metal tooth with pin on May 20, 2002; the Respondent kept to apply or inject the additional noxious medications and inducers into gums and mouth causing cold biting or corrosive pain, and incorrectly ground down the teeth, which to let the Petitioner's mouth and body condition go out of its normal state and be wore quickly according to the respondent's premeditated malpractice(s) plan (17a Tr.18a).

On June 15, 2002, the Petitioner went to the Respondent for the question regarding the #10 implant tooth and seeking to resolve the problem of the biting pain with numbness. The Respondent said that the Petitioner's teeth and gums were very clean and did not have any problems; then the Petitioner respectfully requested the Respondent to treat the teeth with the most reasonable method according to the Petitioner's existing teeth conditions and to resolve the problem of pain. Then, the Petitioner's eyes were rapidly covered by the Respondent, and the Respondent stealthily harmed or re-harmed the Petitioner's teeth, gums, tissues of jaws and the tissues of mouth and body as possible while Respondent disguised himself as in examination, and applied and injected the noxious medications, reactants or virus into the Petitioner's mouth and body tissues to repeat the same severe burning pain in the Petitioner's mouth and body as the Respondent did on May 2, 1997 (19a Tr. 21a). The Petitioner tried to ask the Respondent regarding severe burning pain, but the Respondent disappeared in the coming days.

Which caused the Petitioner to remember the same things happened and the same symptoms he had after the Respondent's malpractice(s) acts in 1997 (21a). This is a true story of the Petitioner's miserable experience; the Petitioner could remember it clearly, because it is the unforgettable bad experience.

The Petitioner's mouth and body problems and pain still exists; especially the teeth, gums, tissues of jaws, palate, the tissues under the tongue, left ear area, eyes area, cervical area, shoulders, left arm and spine, which its are worse when cold or bad weather. Because, Petitioner's mouth and body tissues were harmed and damaged by the Respondent's stealthy and serial malpractice(s) acts with means of noxious medications, reactants, virus from May 2, 1997 to June 15, 2002 by a premeditated malpractice plan.

The Petitioner's mouth and body tissues were harmed and damaged by the Respondent did a whole series of the premeditated malpractice plan, which was recorded in the Petitioner's mouth and body (Reasons for granting writ A).

This dental (harm) malpractice action was commenced by purchasing the Index Number and filling the Summons with notice with Clerk of the Supreme Court of New York State, County of New York on November 13, 2003, which was served upon the Respondent on March 2, 2004; and the Affidavit of service was filed with the Clerk of the Supreme Court on March 4, 2004; which was done according to the Court's instruction of the "How to serve Initiating Papers" *. Petitioner filed Complaint/Amended Complaint ** with the Clerk of the Supreme Court of New York State, County of New York on or about April 15, 2004, and its was served upon the Respondent on or about April 15, 2004, which is within 20 days from either the date of the Petitioner picked up the Respondent's Appearance with the demand for Complaint in the Post Office on April 5, 2004, or the date of it could not be reached petitioner by the postmaster at first delivery date of March 29, 2004. The Petitioner received the Respondent's Verified Answer to Amended Complaint on April 30, 2004.

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* A Summons with Notice or a Summon and Complaint must be served and proof of service filed within 120 days of getting your Index Number.

** Complaint was filed on April 14, 2004, and it was served upon Respondent on April 15, 2004. Amended Complaint with a correcting chart was filed on April 15, 2004, which was served upon Respondent on April 16, 2004, for correcting several words in the complaint. Affidavits of services were filed with the Clerk of the Supreme Court of New York State, New York County on April 20, 2004.

Then, the Respondent demanded a bill of particulars with difficult and finely detailed questions, but the Petitioner agreed to respond to it as best as possible while the Respondent's attorney Mr. Charles E. Kutner called the petitioner to ask for it. After that, the Respondent brought on motions for compelling Petitioner to serve an amended complaint does not specify the amount of damages and bill of particulars which confused the Petitioner and made the Petitioner did not know how to deal with it, and did not have the enough time and spirit to write the necessary document in response to the case, but agreed Respondent's requests. The bill of particulars and etc. were served upon the Respondent within the extended period. However, this case was pulled to New York City, Civil Court from this Supreme Court by the Respondent alleged this Supreme Court does not have jurisdiction for it with the reason that the Petitioner did not tell Court how much for damages. In fact, the Complaint or Amended Complaint having the demanded amount of said the name of the case which this Supreme Court has the jurisdiction for it.

On November 17, 2004, this matter was moved before the Civil Court of New York City by the Respondent for compelling the Petitioner to serve an Amended bill of particulars, but the Respondent's motion was denied and the case was scheduled for trial on February 7, 2005 by the Judge of the Court. On January 5, 2005, this matter was moved before other Judge of the Civil Court of New York City by the Respondent for seeking summary judgment dismissing complaint by submitted the alleged prima facie which was disproved by itself, by the Petitioner's papers and by the facts. On February 1, 2005, an order dismissing complaint was signed by the same other Judge of the Civil Court of New York City based on the Respondent's alleged prima facie which this prima facie having been disproved.

The Petitioner decided to appeal the case, because the Petitioner's mouth and body tissues were harmed and damaged by the Respondent's premeditated malpractice(s) plan causing health problems which is the fact. As the Petitioner could not get an expert or an attorney; the Petitioner requested the Courts to allow the Petitioner to submit the case merit by himself base on the facts and the direct evidences in the Petitioner's mouth and body, or any other relief, as the fact exists there.

The Petitioner was permitted to filed the appellate brief until the Appellate Court's session of December 2005 while filling the Notice of Appeal within the filling time. On December 5, 2005, the Petitioner's appellate brief was filed with the Clerks of the Appellate Term of New York State Supreme Court-First Department. Then, it was moved to the Appellate Division of New York State Supreme Court-First Department on April 24, 2006. Then, it was moved to New York State, Court of Appeals on August 8, 2006. The Appellate Term of New York State Supreme Court-First Department's Order and Decision denying the Petitioner's reargument motion and appeal (5a, 6a-7a). The Appellate Division of New York State Supreme Court--First Department's Order denying a Petitioner's motion for leave to appeal to this Court (4a). New York State, Court of Appeals' Order dismissing a Petitioner's motion for leave to appeal to New York State, Court of Appeals (3a). On January 11, 2007, New York State, Court of Appeals entered an Order denying a Petitioner's reargument motion (2a). This Petition follows.

REASONS FOR GRANTING WRIT

A. The Respondent Deprived the Petitioner of Body Right and Health by Did a Whole Series of the Malpractice(s) Acts in the Petitioner's Mouth and Body by a Premeditated Malpractice(s) Plan.

About April in 1997, the Petitioner had a small problem of a blood ball from the apex of gingival papilla between the teeth of #18 & #19 at facial side on left of lower jaw, measuring about 0.25 cm at the apex of gingival papilla (i.e. the bottom of the blood ball), about 0.5 cm width at the middle of the blood ball and about 0.7 cm height. But, there was not any pain on any the Petitioner's teeth, gums or periodontiums and all of the Petitioner's gums were normal in nature without gingivitis or pain; also the Petitioner's whole body felt very comfortable. According to the actual state, this blood ball was neither cancer nor pyogenic granuloma.

On May 1, 1997, the Respondent alleged it was cancer and planned to do a whole series of his malpractice(s) acts, which the Respondent started to do the first step of his premeditated malpractice(s) acts when removing the small problem of the aforementioned blood ball on May 2, 1997, for making the chances continued to do his premeditated malpractice(s) acts of that to harm the Petitioner's teeth for getting his implant business, and to harm the Petitioner's mouth and body tissues for making the smokescreen and the dishonest means by a premeditated malpractice(s) plan.

From May 2, 1997 to June 15, 2002, the Respondent did a whole series of the premeditated malpractice(s) acts in the Petitioner's mouth and body and prepared the premeditated false records for hiding his dishonorable malpractice(s) plan.

The teeth of #4, #10 & #14 were stealthily holed and harmed by the Respondent when removing a small problem of the above-mentioned blood ball between #18 & #19 teeth on May 2, 1997, forcing the #4 & #10 teeth to be cracked and broken. The #14 tooth was pulled by the doctor at UMD, N.J on June 27, 2002, because the one of #14 tooth roots was vandalized into three pieces inside the bone by the respondent's serial malpractice(s) acts at different times (8a Tr. 11a). The #10 was replaced by the implant tooth on May 20, 2002, but it fell out on June 19, 2003 which was the result of the Respondent's premeditated serial malpractice(s) acts; the worse things was that the respondent harmed and vandalized the Petitioner's teeth, gums, tissues of jaws, palate and the tissues of mouth and body stealthily with the worse malpractice(s) means when implanting the #10 from May 16, 2001 to June 15, 2002 (12a Tr. 21a) than he did previously in 1997 (8a Tr. 11a).

From May 2, 1997 to June 15, 2002. The Respondent did a whole series of malpractice(s) acts stealthily in the Petitioner's mouth and body after covering petitioner's eyes by a premeditated plan. The Respondent stealthily, serially harmed the Petitioner's teeth, gums, tissues of jaws and the tissues of mouth and body; and stealthily, serially injected large amount of liquids of the noxious reaction mixtures or virus (its has the high reaction characteristic) into the Petitioner's mouth tissues, and injected the condensed noxious reactants, substances and etc. into the tissues under the tongue, the harmed teeth, gums, the tissues of jaw, palate, left inner cheek which then defused or directly injected into hidden parts of mouth and body, became to be the reactive inducers or infectious agents causing the lengthy reaction motions and pain; these reaction motions were induced to severe by the Respondent injected and applied the different inducers inducing the symptoms of the severe burning pain

(on May 2 &16, 1997 and June 15, 2002) and severe cold biting or corrosive pain (at most times) and etc. causing the severe reaction motions and the lengthy inflammatory reactions and pain (especially teeth, gums, jaws, palate, and the tissues under the tongue, left ear area, eyes area, cheek, neck, cervical area, shoulders, left arm and spine), which harmed and damaged the Petitioner's mouth and body tissues as its was recorded in the Petitioner's mouth and body.

The root and periodontium of #24 tooth at lingual side was holed and shaken and hit by tools, and noxious reaction mixtures were injected into the lingual gum to loosen the tissues causing the apical root to crack. The teeth of #9, #13, #15, #22, #24, #25 and etc. were stealthily holed or harmed by noxious reactants and etc. causing pain similarly and in form like as the teeth of #4, #14 & #10 were stealthily holed and harmed causing pain; which #4, #10, #13 were broken, one of the #14 tooth roots was vandalized into three pieces.

The gums were stealthily cut off or dug out which be the teeth area of #2, #3, #4, #9, #10, #11, #14, #15, #18, #19 at facial side, and teeth area of #24, #25, #26 & #27 at lingual side. The teeth roots, gums, sockets bone of #2, #3, #4, #8, #9, #10, #11, #12 #13, #14 #15, #18 & #31 were badly vandalized. The teeth or roots and bone of #22, #24, #25, #26, 27 and etc. were seriously harmed or holed inside the lingual gums and under the movable tissue below the tongue.

The teeth roots, gums and tissue of jaws, palate were holed or shaken and harmed by noxious reactants and etc. which be the teeth area of the #18, #19, #20, #22, #23, #24, #25, #26, #27, #28, #29, #30 & #31 at lingual side of lower jaw, and #18, #19, #31 & etc. at facial side of lower jaw, and be the teeth area of #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13 #14 & #15 at palate and one side or both sides of upper jaw, causing bone loss, sockets cracked and most of teeth to be dead or loosened. The teeth were incorrectly

ground down that the #22, #23 & #24 teeth (0.15 cm) and the #8 & #9 teeth (0.1 cm). The double roots molar teeth of the #2, #3, (#14), #15, #18 #31 & etc. were harmed to be one of every tooth roots dead or loosened; the one of #14 tooth roots was vandalized into three pieces and the bone cracked; the sockets bone between the #2 & #3 were dug out or harmed to be the vertical bone missing.

The left ear hearing reduced and none-stop tinnitus (ear hearing tested on August 9, 2004) which was caused by the Respondent applied and injected the noxious medications, reactants or virus and etc. into the Petitioner's teeth, gums, tissues of jaws, palate, mouth, body, and the tissues around the left ear area causing severe pain and the lengthy state of inflammatory reactions and pain resulting in the tissues around left ear area to be harmed and pain; which also causing the eyes pain and vision reduced, because the noxious reactants or virus and etc. diffusing to the tissues around eyes area from the harmed mouth tissues and left ear area causing similar pain and bad effects still exists.

The tissues under the tongue were badly harmed where the Respondent injected plenty of the noxious reactants, substances, powdery substances and etc. into the places of the muscles or ligaments and tissues under the tongue deeply into (or diffused into) the muscles, ligaments, tissues of neck or cervical tissues, became to be the hidden infectious source causing severely radioactive reaction motions and the lengthy state of inflammatory reactions with pulling pain and etc., which resulted in the muscles, ligaments, nerves, blood vessels, the tissues under the tongue, and tissues of cervical area, shoulders, left arm and spine to be harmed or damaged causing damaging consequences and effects still exists.

The cervical spinal MRI films of October 7, 2002 and December 23, 2002 show that the cervical spinal tissues were harmed and the intervertebral disks from C3-4 through C6-7 level herniated differently as the C3-4 0.1 cm, the C4-5 0.1

cm, the C5-6 0.4 cm and the C6-7 0.2 cm, became the significant cervical stenosis without cord effect, myelopathy, spondylosis and etc. which was caused by the supporting tissues of muscles, ligaments, anuli fibrosus, nerves, blood vessels and etc. were harmed by the Respondent's acts with the noxious medications, reactants, virus and etc. causing the severe reaction motions and the lengthy state of the inflammatory reactions with pulling pain and etc. resulting in the tissues to be harmed, calcified and disvolution, which also was noted on the lateral cervical spinal x-rays of December 20, 2002 that there being (nine marks like the injection lines) double dark marks on the each cervical vertebral part from C3 through C7 level; and the ligaments were calcified at C6-7 point of the anterior longitudinal ligament and at C6 point of the supraspinal ligament. The petitioner's congenital cervical vertebrae canals are at normal limits and the cervical vertebrae are in its proper orderly state in line, which was noted on the MRI. and the x-ray of cervical spine; the reason for the significant cervical stenosis without cord effect, myelopathy and spondylosis, is because the supporting tissues were harmed causing the intervertebral disks herniated, by the Respondent's stealthy malpractice(s) acts with noxious medications, reactants, virus since 1997.

The Respondent's malpractice(s) plan resulted in the Petitioner suffered: severe bone loss; and the sockets or bone were shaken and cracked; and the healthy teeth were holed, deadened and broken; and the healthy gums and sockets were cut and dug out; and teeth were hit or harmed and incorrectly ground down; and the nerves, blood vessels, muscles, ligaments, the tissues under the tongue, jaws, palate, and the tissues of left ear area, eyes, cheek, neck, cervical area, shoulders and left arm, spine were harmed or damaged by the Respondent's stealthy and serial malpractice(s) acts with the noxious medications, reactants, virus, etc. by a premeditated plan causing health problems with pain still exists.

B. The Respondent Harmed the Petitioner Stealthily by a Premeditated Malpractice(s) Plan which was Proved by the Fact.

From May 2, 1997 to June 15, 2002, the Respondent did a whole series of the malpractice(s) acts in the Petitioner's mouth and body stealthily after covering the Petitioner's eyes by a premeditated malpractice(s) plan (R. for G. writ A). This dental (harm) malpractice(s) action was correctly started on November 13, 2003.

The Respondent alleged he treated the Petitioner in accordance with the accepted standards of good dental practice which was disproved by the fact (R. for G. writ A). As Mr. Berman and Mr. Moor phrased it in their treatise on their Nolo's Deposition Handbook, our Country's system of justice is base on the honesty. There are strong grounds and facts to support the Petitioner's action. The Respondent is trying to deprive the Petitioner of telling and using the facts for this special dental malpractice(s) action, but the Respondent submitted the alleged prima facie for seeking summary judgment dismissing complaint which this alleged prima facie had been disproved by itself and by the fact.

The Courts or Judges in New York State agreed that this dental action has merit, but the Petitioner was ashamed and could not summit the merit or answer the Courts how much at that time, because the Petitioner did not know how much for treating and need more times to writ the elements of dental-medical evidences. As the Petitioner could not get an expert or an attorney; the Petitioner requested the Courts to allow the Petitioner to submit the case merit by himself base on the facts and the direct evidences in the Petitioner's mouth and body, or any other relief, as the fact exists there (R. for G. writ A).

C. N. Y. Courts' Orders Denying Petitioner's Action Produces the Wrong Impression that Respondent Could Deprive any People of Body Right and Health for his Premeditated Malpractice(s) Plan to Harm the Federal Constitution.

The Petitioner is the victim of the Respondent's premeditated malpractice(s) plan which was proved by the fact and the direct evidences in the Petitioner's mouth and body (reasons for granting writ A). The Petitioner demands that the Respondent to pay for all the costs of treating, expenses, and the damages of suffering, loss of body quality and (normal) work abilities, which is needed for constituting the elements to establish a substantive example for protecting our community quality and cultural values. Because, the Respondent harmed the Petitioner for his premeditated malpractice(s) plan which is the horrible matter, as it not only brought the painful burden to the people, but also produced the damaging effects it's harmful to our community quality and cultural values, of said the premeditated dental-medical malpractice(s) plan producing the burden can be shifted to the community and causing the awful horrors, such that it is likely our community base would be attacked by the soft power of the damaging effects. The Petitioner's action trying to eliminate the said damaging effects for the community, for the people, numberless good doctors and the petitioner by using the effective means of protecting the personal body right, and other relief, which is highly necessary. Thus, the requested writ should be granted.

CONCLUSION

The New York Courts' orders of dismissing or denying the Petitioner's action which fundamentally produces the wrong impression and precedent that the Respondent could deprive any people of body right and health for his premeditated malpractice(s) plan, to cause the damaging effects be harmful to the community, and to harm the federal constitution. Therefore, the Petitioner requests that the writ requested be granted and the Decisions or Orders of New York Courts reviewed by this Honorable Court.

Respectfully submitted

Mau Hoi. Tung, Petitioner
101, Danforth Avenue,
Jersey City, New Jersey 07305
(201) 433-9341

Dated: June 8, 2007

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

March 30, 2007

Mr. Mauhoi. Tung
101 Danforth Avenue
Jersey City, New Jersey 07305

Re: Mauhoi. Tung
V. Henry Chiu
Application No. 06A935

Dear Mr. Tung:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Ginsburg who on March 30, 2007 extended the time to and including June 10, 2007.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

By

Erik A. Fossum
Case Analyst

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the eleventh day of January 2007

PRESENT,
HON. JUDITH S. KAYE, Chief Judge, presiding

1-12 Mo. No. 1311
Mauhoi Tung,

Appellant,

V.

Henry Chiu, D.D.S., &C.,

Respondent.

A motion for reargument of motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany
On the twenty-four day
of October 2006

PRESENT,
HON. JUDITH S. KAYE, Chief Judge, presiding

1-12 Mo. No. 958
Mauhoi Tung,

Appellant,

V.

Henry Chiu, D.D.S., &C.,

Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that this Court does not have Jurisdiction to entertain it (see NY Const, art VI, S 3 {b} {7}; CPLR 5602).

/s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on July 13, 2006.

Present - Hon. Peter Tom, Justice Presiding
Angela M. Mazzarelli
Richard T. Andrias
George D. Marlow
Bernard J. Malone, Jr., Justices.

----------X

Mauhoi Tung,
Plaintiff-Appellat,

-against-

M - 2271
Index No. 570802/05

Henry Chiu, D.D.S., doing business as Mott Street Dental Services P. C.,
Defendant-Respondent.

----------X

Plaintiff-appellant having moved for reargument of or, in the alternative, for leave to appeal to this Court from the decision and order of the Appellate Term entered in the office of the Clerk of the Supreme Court, New York County, on or about January 20, 2006,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion, to the extent that it seeks leave to appeal from the Appellate Term, is denied. The motion, to the extent that it seeks reargument of said order of Appellate Term, is dismissed.

ENTER:

Clerk.

At an Appellate Term of the Supreme Court, First Department Held at the Court House, Borough of Manhattan, City of New York, on the 4th day of April 2006

Present: Hon. William P. McCooe,
" Martin Schoenfeld, Justices

Mauhoi Tung
Plaintiff-Appellant N.Y. County Clerk's # 570802/05
-against- NY Civil # 523 TSN 2004
Henry Chiu, D.D.S. d/b/a **ORDER ON MOTION**
Mott Street Dental Services P.C.
Defendant-Respondent Calendar # 05-406

The above named plaintiff-appellant having by notice of motion, dated the 8th day of February 2006, moved for an order granting reargument or, in the alternative, granting leave to appeal to the Appellate Division - First Department and for other relief.

Now upon reading and filing the notice of motion and the affidavit of Mauhoi Tung, sworn to on the 8th day of February 2006, and the papers annexed in favor of the motion, and the statement of Handol Khym, affirmed on the 17th day of February 2006, and the papers annexed in opposition thereto,

It is Ordered that the motion for reargument or for leave to appeal to the Appellate Division-First Department is denied

Enter,

/s/ _____
Justice, Apellate Term,
Supreme Court, First Department

Mauhoi Tung v Chiu

2006 NYSlipOp 50068(U)

Decided on January 20, 2006

Appellate Term, First Department

Published by New York State Law Reporting Bureau pursuant to Judiciary Law S 431.

This opinion is uncorrected and will not be published in the Printed Official Reports.

Decided on January 20, 2006
APPELLATE TERM OF THE SUPREME COURT. FIRST DEPARTMENT

PRESENT: Suarez, P.J., McCooe, Schoenfeld, JJ
570802/05.

Mauhoi Tung, Plaintiff-Appellant,
against
Henry Chiu, D.D.S., d/b/a Mott Street Dental Services P.C.,
Defendant-Respondent.

Plaintiff appeals from an order of the Civil Court, New York County (Jeffrey K. Oing, J.), dated February 2, 2005, which granted defendant's motion for summary judgment dismissing the complaint.

PER CURIAM:
Order (Jeffrey K. Oing, J.), dated February 2, 2005, affirmed, with $10 costs.

Civil Court properly dismissed this dental malpractice

action. Defendant's expert medical opinion established a prima facie showing of entitlement to judgment as a matter of law. Plaintiff's opposition, unsupported by competent medical evidence tending to establish the essential elements of dental malpractice, was insufficient to defeat summary judgment (see Weisenthal v. Weinberg, 17 AD3d 270 [2005]; cf. Prigorac v. Park, 20 AD3d 363

[2005]).

This constitutes the decision and order of the court.
Decision Date: January 20, 2006

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HISTORY AND FACTS

About April in 1997, the Petitioner had a small problem of a blood ball from the apex of gingival papilla between the teeth of #18 & #19 at facial side on left of lower jaw, measuring about 0.25 cm at the apex of gingival papilla (i.e. the bottom of the blood ball), about 0.5 cm width at the middle of the blood ball and about 0.7 cm height. This blood ball was tightened to become about 0.12 cm at the bottom of the blood ball by wrapping a thread around it as was done by the Petitioner; but there was not any pain on any the Petitioner's teeth, gums and periodontiums, and all of the Petitioner's gums were normal in nature without gingivitis or pain; also the Petitioner's whole body felt very comfortable.

On May 1, 1997, the first time, the Petitioner went to the Respondent Henry Chiu D.D.S. for a small problem of the aforementioned blood ball. After an x-ray, Respondent said that the Petitioner did not have any problems with any teeth, but the Respondent alleged the blood ball was cancer and scheduled the date of May 2, 1997 to remove it; the Petitioner did not know what it was at that time, because the Petitioner did not have any medical and dental history and treatment experience. Actually, Respondent planned to harm the Petitioner's mouth and body tissues for his malpractice(s) purpose. The Respondent's major acts was that to harm the Petitioner's teeth for getting his implant businesses, and to harm the Petitioner's mouth and body tissues for making the smokescreen and the dishonest means by a premeditated malpractice(s) plan. On May 2, 1997, the Respondent started to do the first step of his premeditated malpractice(s) acts for making chances to continue his premeditated malpractice(s) plan.

From May 2, 1997 to June 15, 2002, the Respondent did a whole series of malpractice(s) acts by a premeditated malpractice(s) plan, which the Respondent did the main malpractice(s) acts after covering the Petitioner's eyes on these dates of May 2, 1997 (9a), May 16, 2001 (12a), June 6, 2001 (13a) and June 15, 2002 (19a).

On May 2, 1997, the purpose of this appointment was for removing the above-mentioned blood ball between the #18 & #19 teeth, but after the Petitioner's eyes were covered, the Respondent started to do the first step of his premeditated malpractice acts, by harming the Petitioner's teeth, mouth tissues and injecting and applying the noxious medications, reactants or virus and etc. into hidden part of mouth and body tissues causing the Petitioner's mouth and body tissues suffered severe burning pain.

That night, less than hour after going to bed, suddenly, the Petitioner was awakened by a severe pain and burning sensation which lasted about 20 minutes; there was a severe bad odor blood coming out from the severe burning pain #14 gum around the severe burning pain #14 tooth, and this tooth was rough at facial side; also the tooth and gum of #4 was corrosive pain at facial side, the #10 was numb and pain inside the lingual gum. Then, the Petitioner brushed the teeth and gums periodically, (there was a little cotton brushed out from the facial gum of #14 tooth) then the severe burning pain reduced gradually; but medications, noxious medications and etc. were spreading from gums mouth to body causing pain. At that time, the Petitioner did not know why it happened and did not know how to do.

About seven days later, the two stitches was pulled off by the Respondent where the blood ball was removed, the respondent said that Petitioner's teeth had no problems and scheduled May 16, 1997 for cleaning the Petitioner's teeth.

On May 16, 1997, the Respondent's assistance #2 to sand the Petitioner's teeth with a electronic sanding wheel as the method of cleaning teeth. The #14 & #4 facial gums were re-hurt by a electronic sanding wheel by the assistant #2, then she applied the unknown medication on both re-hurt facial gums to cause the re-hurt facial gums and teeth of #4 & #14 re-suffered the severe burning pain (which was designed by the Respondent's premeditated malpractice(s) plan to apply the additional noxious reaction inducers after the damaging things he did). Especially, the #14 facial gum was split by the inserted substances as some yellow fillers (the yellow fillers could be pressed into powders by fingers) were brushed out, following something like white bone fell out from facial gum, extremely severe pain for many days, and whole mouth felt uncomfortable.

Some days later, the #4 tooth was severely cold biting pain inside the tooth, few weeks later the tooth split a piece off at lingual side from the top middle of the corona dentis till about 1 mm before the lingual gum, because the tooth was holed and harmed by the Respondent on May 2, 1997.

On July & August 1999, the Petitioner came to the Respondent regarding the burned teeth pain, after Petitioner sat on the dental chair. Instantly, the Respondent inserted a dental probe with a bend at end into lingual gums of #10 & #4 and shook the probe left and right for several times to re-injured the teeth and sockets inside the gums; but at that time Petitioner did not know why the Respondent did that.

On November, 1997, the Petitioner came back to the Respondent's office for cleaning teeth which was requested by the Respondent at several months ago. The respondent's assistant #2 used the same tool to sand the Petitioner's teeth as the method of cleaning teeth. As same as last time, she sprayed the bubbly on each gum around the teeth, which the bubbly caused the headache and the hurt teeth, gums and mouth tissues got more pain.

After the above premeditated malpractices procedures, the Respondent let the harmed teeth of #4, #10 & #14 be broken for his implant business, and let the Petitioner's mouth and body tissues be harmed and damaged as possible by the noxious medications, reaction mixtures or virus which were injected and applied into the Petitioner's mouth and body tissues causing severe burning pain, severe cold biting or corrosive pain and etc. But, at that time, the Petitioner did not know why the abnormal symptoms happened, and did not know how to do; when the Petitioner asked the Respondent about the pain, but the Respondent always told Petitioner and said "your teeth had no problems you should stay only one dentist, I know what you need".

And, the teeth of #14, #10 and #4 were harmed on May 2, 1997 causing pain. The #14 tooth was pulled by the doctor at UMD, N.J on June 27, 2002, because the one of #14 tooth roots was broken three pieces inside the bone by the Respondent's serial malpractice(s) acts at May 2 (&16), 1997, June 6, 2001 and June 15, 2002.

The #10 tooth broke off on January 2000, and the #4 tooth broke off about February 17, 2001. When pulling the #10 root (did other work?) on February 9, 2001, and the #4 root on February 22, 2001, the Respondent pushed a bigger needle into the gums of #10 and #4 deeply with much power and then injected much Novocain or medications (at least a hundred times more than the aforementioned doctor used) which caused the teeth area of #10, #4 & #3 was very painful inside the gums and bone for few months (because Respondent did it with the malpractice(s) means to vandalize the bone and tissues and injected the noxious medications together with Novocain into gums deeply to inner tissues, then stitched the opening to let the noxious reaction mixtures be enclosed inside the gums and inner tissues. firmly, then diffusing to hidden parts of tissues causing bad reactions and pain inside the gums and bone).

On May 3, 2001, the Petitioner came to the Respondent for the #10. The Respondent said that either tooth bridge or implant was ok, but the better method to be implant; at that time the Petitioner very trusted and respected the Respondent and believed the Respondent could help the Petitioner to build the losing teeth of #10 & #4 in good condition; also the Respondent was very glad and scheduled May 16, 2001 to start implanting #10 (the #10 implant pin with tooth was installed on May 20, 2002, but it fell out on June 19, 2002 which was the result of the Respondent's malpractice(s) plan). Actually, from May 16, 2001 to June 15, 2002, the Respondent harmed and vandalized the Petitioner's mouth and body tissues with the worse malpractice(s) means when implanting the #10 for continuing his premeditated malpractice(s) plan since 1997.

On May 16, 2001, this appointment was for installing the #10 implant socket. After the Petitioner's eyes were covered, the Respondent cut and opened eight lingual gums from #5 to #12 without telling the Petitioner beforehand. Then, the Respondent drilled the hole (?) or broke the bone, installed the implant socket (?) or some damaging works was done (there was no pin or screw to be installed). The Petitioner apparently heard the abnormal and heavy drill turning sounds more than twenty times periodically and the punching sounds of "dan, dan" at least 16 times (the Petitioner believes that the Respondent was making the smokescreen to confuse the Petitioner's attention and feelings, but used some other special malpractice(s) tools to do the damaging things, and applied or injected the noxious reactants and etc. into hidden parts of mouth and body tissues for his premeditated further malpractice(s) purposes; and the #10 implant socket may not installed this time). Which caused Petitioner's whole face swelling up a lot, and whole body was very numb and painful, and the opened

eight lingual gums from #5 to 12 was uneven and corrosive pain, also there was something like clear water from a little hole on the gingival ridge at upper side of #10 facial gum.

The Petitioner told the Respondent the above problems when the stitches was pulled off by him about seven days later, and the Respondent said that it's nothing. The Petitioner came back to the Respondent on June 1, 2001, because something like clear water from a little hole on the gingival ridge at upper side of the #10 facial gum still existed; the Respondent gave the Petitioner the prescription for medication to apply on the #10 facial gum where the little hole was. About few days later, the Petitioner came back to the Respondent and told the Respondent that the little hole went to a bit worse after applying the medication; but the Respondent told the Petitioner must continue to apply the medication, then it apparently went to worse as the gum around the very little hole became soft and the hole was covered (this soft point about 0.2 cm around the very little hole, the Respondent may not installed. the #10 implant socket on May 16, 2001), which was caused by the noxious reactants were injected and applied into gums, sockets or bone at previous times and stayed there, then caused the chemical reactions after applying the medication the Respondent prescribed that was designed by the Respondent for making reasons and chances to do the premeditated further malpractice(s) acts.

On June 6, 2001, the Petitioner came back and told the Respondent the aforementioned soft point about 0.2 cm around the very little hole on the gingival ridge at upper side of #10 facial gum which was not resolved. Then, the Respondent's assistant #3 came to put a metal wire into the said soft point where the little hole was on the gingival ridge at upper side of the #10 facial gum and let the

Petitioner to hold the wire, she pushed the x-ray mirror head above the metal wire and the gum, and viewed it with her left eye, then she made a scared face and told the Petitioner came back an hour later at 6:00 pm.

The Petitioner came back at 6:00 pm, the Respondent said that he would clean the above-mentioned soft point about 0.2 cm around a very little hole on the gingival ridge at upper side of #10 facial gum then it would be ok. But, after the Petitioner's eyes were covered, instantly the Respondent malignantly re-cut the eight lingual gums from #5 to #12 causing the Petitioner to suffer miserable pain, and the Petitioner tried to stop it, but the lingual gums were reopened; so the Petitioner had no choice, but to let the Respondent do whatever he wanted to do. Then, stopping a while (Petitioner thinks that the Respondent was applying or injecting Novocain or medications), the Respondent cut the facial gums around the #10 (including the #9 & #11) much off ; also he cut other facial gums of #2, #3, #14, #18 & #19 some or much off differently; then the Petitioner heard the sound of cutting the bone.

Viewing down under the covering black cloth, the Petitioner saw the Respondent inserted a tool into each side of the facial gum of the #8 tooth and shook the tool for making holes, then repeated to insert a thin thing like thin injection needle into each side of the #8 facial gum deeply towards up under the nose with turning power as the thin needle bended and jumped following the Respondent's fast moving hands, the Petitioner felt severe pain; then the Respondent pulled up some instrument through each side of the #8 gum with great force, the Petitioner heard "pop" each time and felt severe pain, the Petitioner's whole body jumped up each time following the Respondent's strongly moved up hands (which was the Respondent's design to confuse the Petitioner's attention and feelings for him to do other dishonorable malpractice(s) works stealthily, and to

directly harm the #8, #9, (#10) & #11 teeth, sockets and bone which caused the whole mouth teeth went to disorder and movement disease after malignantly ground down the teeth of #22, #23, #24, #8 & #9 about 0.15 cm by the Respondent's next malpractice(s) acts on May 20, 2002).

Then, the mouth opener hit the #24 tooth, the Petitioner felt extremely severe pain as if the tooth was breaking, and in the meantime the noxious medications or reactants were injected into gums and mouth tissues. as the Petitioner felt gums and tissues had a swelling sensation and severe numb and in pain; then the Petitioner shook his hand for begging a stop, the Respondent did not stop it, the assistant #3 kept saying: "almost done, almost done". Respondent continued to do something; the Petitioner did not know what else things the Respondent did. At last, the Respondent stitched the lingual gums as same as last time, the stitches were through from facial to lingual at the end of gingival papilla between the teeth of #7, #8, #9 and #11, #12, #13 for finishing. Then, the Respondent went away at once.

On the way home, the Petitioner's whole mouth was extremely numb and painful; and the #14, #18 & #19 teeth and gums were severely numb and in pain as if the teeth were pulled (because the facial gums were cut a lot off, and the additional noxious medications and reactants were applied and injected into the gums or tissues of jaws and hidden parts of mouth and body issues where were stealthily harmed by the Respondent at different times). All of the above caused the Petitioner's whole face swelled-up to both eyes area which it was worse and kept longer than last time. Since this time, the Petitioner was scared of the Respondent; but the #10 implant tooth was not finished, the Petitioner had to go back to have the implant finished.

At that time, the Petitioner did not understand why or what the Respondent did, except the Petitioner felt pain and saw some teeth became yellow and the gums were cut off

or dug out before the mirror. Few days later, the Petitioner looked at the mirror, the Petitioner found out that the facial gums around the #10 (including #9 & #11 facial gums) were transformed, because the facial gums around the #10 were cut off to be flat, there was a small "Meat Ball" swelled up on each side of the #8 gingival papilla at facial side where was harmed by the Respondent inserted tools into its, and the Petitioner's whole mouth was still very painful by the noxious medications and etc., and done somehow by the Respondent's stealthy malpractice(s) acts.

Following, the Petitioner came back for pulling stitches off (as it was told by the Respondent as he used to tell the Petitioner coming back for stitch off at each time). The Petitioner asked the Respondent regarding the pain and the missing gums, but the Respondent refused to answer why he shook each side of #8 facial gum, hit the #24 tooth and why he needed to cut the lingual gums from #5 to #12 twice for implanting #10 only (normally it only needs to cut two or three gums for implanting one tooth); and why facial gums of #2, #3 & #4 were cut much off, and #14 facial gum was cut much off and dug out, and the facial gums around the #10 (including the #9 & #11) were cut off to be flat; and from left side of #19 facial gum to #18 facial gum were totally cut off till movable tissues or muscle. The Respondent only said that the Petitioner brushed them to hard causing these facial gums were shrunk, but the Respondent did not answer the Petitioner's question of how these facial gums could be shrunk so much by brushing within several days (?). Then, the Petitioner requested the Respondent to treat the Petitioner's teeth with the most reasonable way; the Respondent said that he would.

On January 7, 2002, this visit was for installing temporary #10 implant pin. First, the respondent's assistant #2 (Who sanded the Petitioner's teeth as the method of cleaning teeth, and applied and sprayed the noxious medications, the bubbly substance or inducers into the Petitioner's mouth on May 16, 1997 and in November, 1997; and she also sprayed the bubbly substance on the occasion of installing the #10 permanent implant tooth with pin on May 20, 2002. And, apparently she was directed by the Respondent to do so) skillfully brushed the noxious medications to the facial gums from #10 all way to left at #15 facial gum, then down to the #18 & #19 facial gums, then the Respondent came to inject whole shot of light red medications into the #10 gum at left side causing chemical reactions, which for the next few days, these brushed gums suffered cold biting pain inside the gums; and the #14 opened facial gum shrank and closed against the tooth where the gum was harmed and dug out previously, and the point between #18 & #19 at facial side became a deep hole where was injected or filled with dark reactant in it after the gums were cut off till movable tissue or muscle at last time.

On May 20, 2002, this appointment was for installing the permanent implant pin with tooth. After the Petitioner sat on the dental chair, instantly the Respondent ground down the teeth of #22 & #23 about 0.15 cm at the lower jaw, and the #8 & #9 teeth about 0.1 cm at the upper jaw, forcing these teeth to be flat, and causing the teeth of #9 and #24 were hit and the whole upper jaw and the #24 tooth were in severe pain when eating or movement, also the #9 tooth became loose and the gingival papillae cracked at each side of the #8 tooth. On the Petitioner's next visit to the Respondent, the Petitioner told the Respondent the above problems; but the Respondent was unhappy; but cut a hole between the #8 & #9 teeth, then he ground the #9

tooth vertically at right of lingual side (because the sockets, bone and the teeth of #8, #9, #10 & #11 were vandalized by the Respondent at previous times causing the #11, #9 & #8 teeth were pressed to right and #8 tooth was pulled to rest over the left facial side of #7 tooth). After that the above described state and pain still existed, then the Petitioner came back and had to request the Respondent to grind down the #24 tooth. All of the above caused the Petitioner's teeth and mouth to be the discordant state and movement disease, which was designed by the Respondent to let the Petitioner's teeth and mouth condition go out of its natural state and be worse quickly according to the Respondent's premeditated malpractice(s) plan.

On each occasion, from January 7, 2002, installing the #10 temporary pin (twice between January 7 and May 20 when the temporary plastic tooth with pin fell out) to May 20, 2002, installing the #10 permanent implant metal tooth with pin, the Respondent kept to inject or apply the additional noxious medications, bubbly substance or virus into the Petitioner's gums and mouth resulting in the gums could not touch the teeth tightly. These gums and bone were cold biting or corrosive pain, especially the gums of molar teeth upper row, and the #18 & #19 teeth became loose and the roots were exposed at facial side; and there were ulcers on the Petitioner's oral tissues, especially left inside cheek, and the soft tissue became swelled on the left inner cheek above left corner of #15 tooth at facial side where the Respondent injected the noxious medications or reactants deeply into tissues; and Petitioner's mouth was dry; gums, jaw bone, body bone, mouth and body tissues were cold biting pain with numbness like something was being pinched or diffused into body as many little needles from the gums and mouth tissues which made the Petitioner to become tired quickly and he was unable to work.

On June 15, 2002, 6:30 pm, the Petitioner went to the Respondent for the question regarding the #10 implant tooth and seeking to resolve the biting pain with numbness. The Respondent said that the Petitioner's teeth and gums were very clean and did not have any problems; then the Petitioner respectfully requested the Respondent to treat teeth with the most reasonable method according to the Petitioner's existing teeth conditions and to resolve the pain. Then, the Respondent rapidly covered the Petitioner's eyes for harming or re-harming the Petitioner's mouth and body tissues as possible, and repeated to cause the same severe burning pain in the Petitioner's mouth and body as the Respondent did on May 2, 1997.

After the Respondent rapidly covered the Petitioner's eyes, the Respondent used some tools to stealthily harm or re-harm the Petitioner's teeth, gums, tissues of jaws and mouth (especially left inner cheek, tissues under the tongue, the facial gums of #14, #15, #31 and the gum between #26, #27 at facial side, and the gums of #31, #27, #26, #25, #24 at lingual side) while the Respondent disguised himself as in examination by shouting out some numbers to let his assistant #3 record it, and in the meantime he applied and injected the noxious medications, reactants or virus into the hurt or harmed tissues of teeth and jaws and hidden parts of mouth and body tissues. After finishing, the Petitioner found there was much blood coming from gums of #14 & #15 while rinsing the mouth on the dental chair and there were much pain at other gums, especially the facial gum of #31 and the gum between #26 & #27 at facial side, and the gums of #31, #27, #26, #25 & #24 at lingual side. Then, the Respondent went away, he did not talk to the Petitioner how to treat the Petitioner's teeth, as he was aware that he did the dishonorable things again.

That night, after the Petitioner went to bed half hour later, approximately 10:30 pm, suddenly the Petitioner was

awakened by a severe pain and burning sensation which lasted about twenty minutes, there was a severe bad odor blood coming out from the severe burning pain #15 gum around the severe burning pain #15 tooth, the tooth was rough at facial side (as same as the gums and teeth of the #14 & #4 were suffered on May 2 (&16), 1997). Because, the Petitioner had the experiences previously in 1997; this time right away, the Petitioner brushed the tooth numerous times periodically, then the severe burning pain reduced gradually. But, all of the hurt tissues in the mouth was very painful which lasted for more than one year; especially the lingual gums of #31, #30, #29, #28, #27, #26, #25, #24, #18, #19, and the gums of #5, #6, #7, #8, #9, #10, #11 & #12 at lingual side; and the facial gums of #2, #3, #4, each side of #8, #10, #14, #15, #18, #19, #30, #31, and the gum between #26 & #27 at facial side (the facial gum between #26 & #27 turned to dark until UMD, N. J. Dental School cleaned it out on November 19, 2002).

The teeth of #13, #15, #24, #25 and etc. were holed or harmed causing pain similarly and in form like as the teeth of #4, #14 & #10 were holed and harmed causing pain in 1997. The one of #14 tooth roots was vandalized into three pieces inside the bone by the Respondent's stealthy, serial malpractice(s) acts on these dates of May 2, 1997, May 16, 2001, June 6, 2001 and June 15, 2002.

And,, the noxious medications or reactants spread or diffused from gums, mouth and the inner cheek (especially, around the left ear area was in severe pain), then along the neck or cervical area (the cheek and neck were numb and hot) down to shoulders causing chemical or chain reactions, the Petitioner felt severe burning pain as being hit by many needles; especially between bone and muscle were in extremely severe burning pain; and the intensity of the shoulders pain with numbness was increased; and the Petitioner had diarrhea and could not fall asleep for several

days from June 15, 2002 until the Petitioner took the pain-stopping medicine prescribed by the UMD., New Jersey, Medical Clinic on June 19, 2002.

This caused the Petitioner to remember the same symptoms he had in 1997. the noxious medications and reactants spread or diffused from gums, mouth and the inner cheek, then along the neck or cervical area down to shoulders causing chemical and chain reactions, the Petitioner felt severe burning pain as being hit by many needles; especially between bone and muscle were in extremely severe burning pain, and producing headache, ears pain, eyes pain, and the horrible symptom of severe pulling pain like as if the Petitioner's body was pulled to different directions. Due to the above problems, since 1997, the Petitioner never fall asleep without numbness and pain, and it's often to need some sleep, the Petitioner must sit in the arm-chair to sleep until plenty of the noxious reactants, substances and powdery substances came out from gums, tissues under the tongue, jaws and etc. in the summer of 2005.

The Petitioner's mouth and body problems and pain still exists; especially the teeth, gums, tissues of jaws, palate, and the tissues under the tongue, left ear area, eyes area, cervical area, shoulders, left arm and spine, which its are worse when cold or bad weather. Because, Petitioner's mouth and body tissues were harmed and damaged by the Respondent's stealthy and serial malpractice(s) acts with means of the noxious medications, reactant, virus and etc. from May 2, 1997 to June 15, 2002 by a premeditated malpractice(s) plan, which was recorded in the Petitioner's mouth and body.

Condensed by Petitioner,
Mau Hoi. Tung, on June 8, 2007

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(2)

FILED
JUL 13 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-1655

IN THE

Supreme Court of the United States

MAUHOI TUNG,

Petitioner,

v.

HENRY CHIU, D.D.S.,
d/b/a MOTT STREET DENTAL SERVICES, P.C.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF NEW YORK

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

In this New York State dental malpractice case, Mauhoi Tung petitions this Court to reargue the order of the New York Court of Appeals denying his motion for leave to appeal. Petitioner appeals despite being made aware twice, once on his original motion for leave to appeal and again on his motion to reargue, that under Article VI §3(b)(7) of the Constitution of the State of New York and New York Civil Practice Law and Rules §5602, the Court of Appeals does not have jurisdiction to hear an appeal from an action that originates in the Civil Court of the City of New York. There is no basis for jurisdiction, and petitioner fails to set forth any grounds of jurisdiction as required for the granting of a Writ of Certiorari.

Petitioner brought his action in the Supreme Court of the State of New York, New York County. By order of Justice Sheila Abdus-Salaam, Supreme Court, New York County, petitioner's claim was referred to the Civil Court under provisions of the New York Civil Practice Law and Rules. Once the matter was referred to the Civil Court, the respondent obtained summary judgment by demonstrating through an expert that there was no malpractice in the treatment rendered to the petitioner. Following summary dismissal of his claim in the Civil Court, a series of appeals ensued, all of which were denied. Mr. Tung now petitions this Court to relieve him from the order of the New York Court of Appeals in an action that is exclusively reserved to the state and does not involve any federally protected right or interpretation of a federal or state statute.

Pro se petitioner Mauhoi Tung seeks to recover monetary damages for injuries he claims to have suffered as a result of

dental malpractice alleged against the defendant Henry Chiu, DDS d/b/a Mott Street Dental Services, P.C. The action was commenced in the Supreme Court, New York County on September 8, 2004 (Index No: 119616/03). By order of the Honorable Sheila Abdus-Salaam, which order is unappealable, the case was removed to the Civil Court of the City of New York, a court of limited jurisdiction under Judiciary Law of the State of New York as authorized under Article VI of the Constitution of the State of New York in accordance with New York Civil Practice Law and Rules §325(d).[1]

After the case was removed to the Civil Court, the respondent moved for and obtained summary judgment on the merits by order of Hon. Jeffrey Oing.[2] Thereafter, petitioner filed a Notice of Appeal to the Appellate Term of the Supreme Court for the First Judicial Department on February 18, 2005. Under New York law, the Appellate Terms of the First and Second judicial departments have jurisdiction over appeals as of right from the Civil Court of the City of New York and the County Courts. By decision and order of the Appellate Term, the order of the Civil Court was affirmed on January 20, 2006. Thereafter, petitioner moved in the Appellate Term for reargument and leave to appeal to the

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1. N.Y.C.P.L.R. §326(b) treats this matter as having originated in the Civil Court once it has been removed: "***[s]ubsequent proceedings shall be had in the court to which it has been ordered removed as if the action had been originally commenced there***."

2. The Civil Court correctly determined that the respondent established his entitlement to judgment as a matter of law. In opposition, petitioner failed to raise a triable issue of fact. Moreover, no expert affidavit was proffered to establish that the respondent deviated from accepted standards of good dental practice in causing injury to the petitioner.

Appellate Division, First Department. By order of the Appellate Term dated April 5, 2006, petitioner's motion to reargue and for leave to appeal to the Appellate Division was denied. Thereafter, petitioner moved in the Appellate Division for reargument and leave to appeal to the Appellate Division.

Under New York law, petitioner's ability to appeal as of right terminated in the Appellate Term of the Supreme Court. His right to further appeal was by permission only and terminated in the Appellate Division of the Supreme Court, a procedural rule that this pro se petitioner has never grasped. By order of the Appellate Division dated July 13, 2006, petitioner's motion for reargument and leave to appeal to the Appellate Division was denied.

Thereafter, petitioner moved in the Court of Appeals of the State of New York for leave to appeal. By order of the Court of Appeals of the State of New York dated October 26, 2006, petitioner's motion for leave to appeal was denied. The denial of petitioner's motion for leave to appeal was based on the fact that under the Constitution of the State of New York, petitioner exhausted his appellate remedies once the Appellate Division refused to hear his appeal.

Nevertheless, despite having been explicitly informed that he had exhausted his remedies and had no right to further appeal, petitioner again moved in the Court of Appeals for permission to appeal. On January 11, 2007, by order of Hon. Judith S. Kaye, Chief Judge, presiding, petitioner's motion was again denied on the same ground that it had previously been denied, i.e. that New York's highest Court did not have jurisdiction under New York's Constitution to hear an appeal from an action originating in the Civil Court.

Petitioner now seeks relief from the order of the Civil Court of the City of New York, two orders of the Appellate Term of the Appellate Division of the Supreme Court of the State of New York, two orders of the Appellate Division of the Supreme Court of the State of New York, and two orders of the New York Court of Appeals. Mr. Tung petitions the United States Supreme Court ostensibly on the ground that he is dissatisfied with the outcome in the state Courts. He apparently finds it unfair that he has a meritless case and was never able to prove his claim that the respondent deviated from accepted standards of good dental practice. He raises no federal question. He does not raise an issue involving the application or interpretation of a federal statute. He does not claim that he has been damaged as a result of the application or interpretation of a state statute that is repugnant to the federal constitution. For the reasons discussed herein after, the Petition for a Writ of Certiorari should be denied.

SUMMARY OF THE ARGUMENT

Generally, according to 28 U.S.C. §1257(a), the United States Supreme Court has jurisdiction over a Petition for a Writ of Certiorari where a final judgment of a state Court of last resort brings into question a statute of the United States. In this case, the order of the Appellate Division of the Supreme Court of New York, the First Judicial Department did not concern a statute of the United States. The order of the Appellate Division also did not draw into question any statute of the state of New York as being repugnant to either the Constitution of the State of New York or the Constitution of the United States. Finally, petitioner does not assert that any right or privilege guaranteed under the Constitution of the United States was violated by the full and fair hearing obtained in the Courts of the State of New York. No decision

in this case by a New York Court has dealt with a federal question. In fact, petitioner has never raised a federal question in any of the prior proceedings. A review of the record in this case demonstrates that none of the orders from the Courts of the State of New York concerned a question of federal law. Furthermore, petitioner does not even allege that any right of his, guaranteed by the laws of the United States or the laws of the State of New York were violated by the decisions and orders rendered by any New York State Court.

ARGUMENT

Pursuant to 28 U.S.C. §1257(a), the petition should be denied on jurisdictional grounds, as the petition fails to set forth the jurisdictional requirements for the granting of a Writ of Certiorari. This Court has jurisdiction over a Petition for a Writ of Certiorari where a final judgment of a state court of last resort brings into question any statute of the United States.[3] Here, petitioner fails to bring into question any statute of the United States. He merely asserts that "Respondent could deprive any people of body right and health for his premeditated malpractice(s) plan to harm the federal constitution" (Mr. Tung's Petition for a Writ of Certiorari, pg. 16). This Court also has jurisdiction over a Petition for a Writ of Certiorari where —

> The validity of a statute of any State is drawn in question on the ground of its being repugnant to the

3. Pursuant to the New York State Constitution, Article VI, §3(b)(7); N.Y.C.P.L.R. §5602, the New York Court of Appeals did not have jurisdiction over petitioner's motion for reargument under the N.Y.C.P.L.R. §326(b), which treated petitioner's original suit as having originated in the Civil Court once it was removed from the Supreme Court of New York. See also *Moya v. Penske Truck Leasing Co.*, 555 (N.Y. 6-5-2007). Because the New York Court of Appeals has no jurisdiction over suits originating in the Civil Court, the Appellate Division was petitioner's state court of last resort.

> Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

28 U.S.C. §1257(a). Here, petitioner does not draw into question any statute of the State of New York nor does he claim that any title, right, privilege, or immunity under the Constitution has been violated. He merely attempts to assert that the respondent alleged premeditated malpractice could harm the federal constitution.

In *Mellon v. O'Neil*, 275 U.S. 212, 214 (1927), *cert. denied*, (citing, *Whitney v. California*, 274 U.S. 357,360 (1927)) this Court held that "It has long been settled that this court acquires no jurisdiction to review the judgment of a state court of last resort on writ of error, unless it affirmatively appears upon the face of the record that a federal question constituting an appropriate ground for such review was presented in and expressly or necessarily decided by such state court." Furthermore, "It is not enough that there may be somewhere hidden in the record a question, which if it had been raised would have been of a federal nature" *Id.* at 215 (citing, *Dewey v. Des Moines*, 173 U.S. 193, 199 (1899)). The court of last resort in New York never ruled on a federal question, therefore depriving this Court of jurisdiction over the instant petition.

Ordinarily, the United States Supreme Court will only grant a Petition for a Writ of Certiorari for compelling reasons. The circumstances where the Court will usually grant certiorari are when

> "A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power" (Sup. Ct. R. 10(a)).

Secondly, where

> "A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals" (Sup. Ct. R. 10(b)).

Finally, the United States Supreme Court may also grant a Petition for a Writ of Certiorari

> "Where a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court" (Sup. Ct. R. 10(c)).

Under the general criteria set forth in the rules of this Court, Mr. Tung's petition should not be granted. None of the criteria for granting a writ are stated in Mr. Tung's petition. This case was never decided in federal Court and was never heard by a United Stated Court of Appeals.

Furthermore, the decision of the Appellate Division of the New York State Supreme Court did not concern a federal question and could therefore not be in conflict with a decision of this Court or of a United States Court of Appeals. Finally, at no point in this long and torturous course of litigation was a federal question ever presented or considered that would require a decision by this Court.

There is no claim in this case that a federally protected right has been violated. Petitioner does not call into question any specific provision of the United States Constitution nor does he assert that any of his rights as guaranteed by the laws of the United States were violated by the decisions of the Courts of the State of New York.

Finally, it is worth noting that Supreme Court Rule 14(4) states: "The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding requiring consideration is sufficient reason for the Court to deny a petition." Giving this pro se litigant every benefit of a doubt, his petition is so grossly unclear that the basis of his argument for certiorari is incomprehensible. He fails to allege any federal question whatsoever. He fails to address even in the most rudimentary manner why the highest Court of the United States should hear his case. Despite the clear language of two decisions of the New York Court of Appeals regarding its lack of jurisdiction, petitioner continues to abuse the judicial system to harass the respondent. Petitioner has persistently attempted to advance meritless arguments. He has demonstrated his intentions to harass the respondent by his pursuit of meritless appeals. If the petitioner were an attorney, he would have been sanctioned for engaging in frivolous conduct.

CONCLUSION

For the reasons set forth herein above, Mr. Tung's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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No. 06-1655

FILED

OCT 23 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

MAUHOI TUNG,

Petitioner,

v.

HENRY CHIU D.D.S., d/b/a
MOTT STREET DENTAL SERVICES P.C.,

Respondent.

**On Petition For A Writ Of Certiorari
To The State Of New York Court Of Appeals**

PETITION FOR REHEARING

MAUHOI TUNG, Petitioner
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PETITION FOR REHEARING

In this New York State dental malpractice case, Mr. Tung petitions this Court for Rehearing the order of Court of Appeals of New York State denying Petitioner's action that commenced in the Supreme Court of New York State, New York County in connection with the fact that Respondent Henry Chiu D.D.S did a premeditated malignant malpractice plan in the Petitioner's mouth and body which murderously damaged Petitioner's mouth and body tissues causing health problems. There are strong grounds for granting of rehearing and Writ of Certiorari, because Respondent violated the laws and constitutions of New York State and the United States.

New York State Courts denying the Petitioner's action should not be allowed to stand, because it suggests that Respondent Henry Chiu can murderously harm Petitioner and any People by premeditated plan to deprive Petitioner and any People of enjoying the benefit of safe health care, community safety, body safety, human rights and etc. of the laws and constitutions of United States and New York State.

Respondent's brief in Opposition to petition for Writ of Certiorari demonstrates the rehearing and petition should be granted, because it does not explain why Respondent has the right to murderously harm Petitioner but makes the difficulty and confusion surrounding the proper standard of review. Because of this difficulty and confusion blocking the

proper standard of review, this Court should use the inherent power by granting rehearing and petition for protecting citizens (and petitioner) to enjoy the benefit of safe health care, body safety, community safety, human rights and etc. without being harmed by the way like the Petitioner was murderously harmed by Respondent Henry Chiu's premeditated malignant plan; as to defend the cultural values of this land of America.

DISCUSSION

Petitioner went to Respondent for a small problem of a blood ball at the apex of gingival papilla between #18 & #19 teeth at facial side of lower jaw. This blood ball could be easily removed; but the Respondent murderously harmed Petitioner by a premeditated malignant malpractice plan.

This action was commenced by filling the Summons with notice in the Supreme Court of New York State, New York County on November 13, 2003 and served it upon Respondent on March 4, 2004; the Petitioner received the Respondent's appearance with the demand for complaint about April 5, 2004; Complaint was filed and served it upon Respondent about April 15, 2004. In this Supreme Court of New York State: the Petitioner correctly filed complaint according to Court's instruction of "how to file the Summons with Notice or Complaint"; the Respondent answered it with unspecified manner, then Respondent alleged

this Supreme Court does not have jurisdiction for the case, plaintiff was ashamed to answer Court how much, because Petitioner did not know how much for treating; Hon. Abdus-Salaam needed to sign the order transferring the case to Civil Court of New York City as it was demanded by Respondent, and Petitioner did not know how to do it. The Petitioner was trying to get an attorney or an expert but could not get one, Petitioner needed continuing to do it by himself.

In the Civil Court of New York City: on November 17, 2004, Hon. Mathew F. Cooper signed an order and scheduled the date of February 7, 2005 for bench trial. On January 5, 2005, before Hon. Jeffrey K. Oing, there was no trial, the Respondent submitted the alleged prima facie for seeking summary judgment dismissing complaint which was disproved by itself, by the fact and by the Petitioner's papers; but an order dismissing complaint was signed by Hon. Jeffrey K. Oing on February 1, 2005 before the scheduled bench trial date; because this Court may not have jurisdiction for it.

In the Appellate Courts of New York State, Petitioner's comprehensive appellate brief was filed on the Appellate Court's session of December, 2005; however the Appellate Term denied Petitioner's appeal, because of Respondent alleged Petitioner having no competent evidences of said Petitioner does not have an expert. Actually, Petitioner could not get an expert but Petitioner's appellate brief has many reasons and evidences to defeat the Respondent's disproved prima facie or Respondent's brief in

opposition to appellate brief. The Petitioner appealed the case to Appellate Division and Court of Appeals of New York State; because both Court have jurisdictions for it, as Respondent murderously harmed Petitioner by a premeditated malignant plan and the fact exists there. For the reasons discussed hereinafter, rehearing and petition for Writ of Certiorari should be granted.

SUMMARY OF ARGUMENT

This action was correctly started in the Supreme Court of New York State, New York County. This New York Supreme Court has the jurisdiction for it and accepted Petitioner's action, but the Respondent planned to pull this case to Civil Court of New York City for submitting the disproved prima facie to obtain summary judgment dismissing complaint and locking this New York State Supreme Court's jurisdictional case in this City Civil Court causing difficulties. The Respondent's expert dental opinion based on the Respondent Henry Chiu's premeditated false records constituting the alleged prima facie for denying Petitioner's action, which improperly depriving Petitioner's right of litigation. New York Courts denied Petitioner's action resulted in Petitioner needs to appeal the case to the Supreme Court of the United States; because Respondent violated laws and constitutions of the United States and New York State, as Respondent murderously harmed Petitioner by a premeditated malignant plan, and

damaged Petitioner's mouth and body tissues, which to be recorded in the Petitioner's mouth and body.

ARGUMENT

Rehearing and petition for Writ of Certiorari should be granted. Because,

The Respondent submitted the alleged prima facie based on Respondent Henry Chiu's premeditated false records for denying Petitioner's action, which improperly depriving Petitioner's right of litigation, because this alleged prima facie had been disproved by the fact and the direct evidences in the Petitioner's mouth and body.

The Respondent murderously harmed the Petitioner by a premeditated malignant plan violating the laws and constitutions of the United States and New York State of which protecting citizens' right to enjoy the benefit of safe health care, community safety, body safety, human rights and etc. of laws and constitutions of the United States and New York State.

Petitioner Mr. Tung respectfully requests that rehearing be granted to enable the fact and the direct evidences showing for the case.

CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,

October 23, 2007

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CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay.

MAUHOI TUNG, Petitioner